

APPEAL NO. 021910
FILED SEPTEMBER 16, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 25, 2002. The hearing officer resolved the disputed issues by deciding that the respondent/cross-appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter and that the claimant is entitled to SIBs for the second quarter. The appellant/cross-respondent (carrier) appealed the SIBs determination for the second quarter, arguing that there is insufficient evidence to support the determination. The claimant appealed the SIBs determination for the first quarter, arguing that the hearing officer failed to explain the basis for her determination when the evidence for both quarters was the same. The claimant also argues that when the hearing officer makes findings of facts and conclusions of law which do not fairly apprise litigants of the basis for her decisions, then litigants are prejudiced in their rights for appeal.

DECISION

Reversed and remanded.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The good faith criteria of Section 408.142(a)(4) and Rule 130.102(b)(2) is in dispute. The claimant claimed that he had no ability to work as a result of his compensable injury during the qualifying periods for the first and second quarters. The qualifying period for the first quarter was from July 29 through October 27, 2001, and the qualifying period for the second quarter was from October 28, 2001, through January 26, 2002.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work.

Although the same evidence was analyzed to determine eligibility for SIBs entitlement for the first and second quarters, the hearing officer did not specifically identify the narrative she found that specifically explains how the injury causes a total inability to work for the second quarter, but which she rejected as insufficient for the first quarter nor did she note the other record she found which showed the claimant was able to return to work during the first quarter but which she rejected as an "other record which showed" the claimant was able to return to work for the second quarter.

The hearing officer's decision is reversed and the case is remanded for the hearing officer to make specific findings of fact regarding the elements in Rule 130.102(d)(4) relating to the evidence admitted at the CCH, and to specifically identify the narrative which specifically explains how the injury causes a total inability to work. We note that in Texas Workers' Compensation Commission Appeal No. 002196, decided October 24, 2000, the Appeals Panel stated that "in cases where a total inability to work is asserted and there are other records which on their face appear to show an ability to work, the hearing officer is not at liberty to simply reject those records as not credible without explanation or support in the record."

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202, which was amended effective June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**GARY SUDOL, CLAIMS MANAGER ZURICH U.S.
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.**

Margaret L. Turner
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge